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SERVICE DATE – OCTOBER 26, 2012

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35684]

Iowa Pacific Holdings, LLC and Permian Basin Railways—Control Exemption—Cape Rail, Inc. and Massachusetts Coastal Railroad, LLC

Iowa Pacific Holdings, LLC (Iowa Pacific) and its wholly owned subsidiary, Permian Basin Railways (Permian), Cape Rail, Inc. (Cape), P. Christopher Podgurski (Podgurski), Andrew Reardon (Reardon), and Massachusetts Coastal Railroad, LLC (Mass Coastal) (collectively, applicants) have filed a verified notice of exemption for Iowa Pacific and Permian to acquire indirect control of Mass Coastal, a Class III rail carrier, through Permian's acquisition of an 80% stock interest in Cape, the parent company of Mass Coastal, from the two existing Cape shareholders, Podgurski and Reardon.¹ As a result of the proposed transaction, Iowa Pacific and Permian will indirectly control Mass Coastal. Podgurski and Reardon will continue to own the remaining 20% of Cape's shares. Iowa Pacific has created an independent voting trust to

¹ On October 12, 2012, applicants filed a motion for protective order pursuant to 49 C.F.R. § 1104.14 to protect the exchange of information by the parties in this proceeding. That motion will be addressed in a separate decision.

acquire and hold the Cape shares, and to provide for control of Mass Coastal, until Board approval is received through the notice of exemption procedure.²

Through Permian, Iowa Pacific currently controls indirectly the following seven Class III rail carriers in the United States: Austin & Northwestern Railroad Company, Inc. (operating as the Texas-New Mexico Railroad), Chicago Terminal Railroad, Mount Hood Railroad, San Luis & Rio Grande Railroad, Saratoga & North Creek Railway, the West Texas & Lubbock Railway Company, and the Santa Cruz and Monterey Bay Railway Company. In addition, Iowa Pacific directly controls the Rusk, Palestine & Pacific Railroad. Cape currently owns Mass Coastal and Cape Cod Central Railroad (Cape Cod), an intrastate passenger excursion railroad.

Mass Coastal operates a network of about 100 miles of track and trackage rights in southeastern Massachusetts and on Cape Cod. Applicants state that the purpose of the transaction is to improve the revenue base of Cape's two subsidiaries, Mass Coastal and Cape Cod, through access to Iowa Pacific's greater freight and passenger marketing resources, and to achieve economies of scale through centralization of administrative functions.

² On October 9, 2012, applicants submitted a copy of the voting trust agreement to the Board for an informal, nonbinding opinion asking whether the voting trust would sufficiently insulate the applicants from unauthorized control of Cape and its subsidiaries, pending approval or exemption of the subject transaction by the Board. In a letter dated October 12, 2012, the Director of the Office of Proceedings informed the applicants that it is her informal opinion that the proposed voting trust agreement would effectively insulate the applicants from unauthorized control of Cape.

Applicants state that they propose to consummate the transaction on or about November 12, 2012. The earliest this transaction can be consummated is November 11, 2012, the effective date of the exemption (30 days after the verified notice was filed).

Applicants represent that: (1) the rail line to be operated by Mass Coastal does not connect with the rail lines of any other carriers controlled by Iowa Pacific through Permian or by Iowa Pacific directly; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines of the carriers; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 2, 2012 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35684, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1700 K Street, N.W., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: October 23, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.